

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FREDERICK J. KAPALA

APPEARANCES:

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1 THE CLERK: 11 CR 50062-1, U.S.A. v. Dayton Poke.

2 MR. KARNER: Good afternoon, your Honor. Mark Karner
3 on behalf of the United States.

4 MR. CAVER: Brendan Caver on behalf of Dayton Poke, who
5 is present.

6 THE COURT: Case comes before the court on the
7 defendant's motion for substitution of appointed counsel. In
8 determining whether this motion should be granted, I have to
9 consider the timeliness of the motion, I have to adequately
10 inquire into the defendant's motion, and I have to decide
11 whether the conflict, if it exists, is so great that it results
12 in a total lack of communication preventing an adequate defense
13 or if the attorney representing the defendant is not doing
14 something that a minimally competent attorney would not do or
15 do.

16 And so, Mr. Poke, I'll ask you to tell me
17 specifically -- first of all, as to timeliness, it's not set for
18 trial. It's set for sentencing. The sentencing is not until
19 Thursday, August 29th, and so that the timeliness weighs in
20 favor of granting the motion. The most --

21 MR. KARNER: I'm sorry to interrupt, but I think your
22 Honor mentioned last court appearance that --

23 THE COURT: We would continue it.

24 MR. KARNER: Right.

25 THE COURT: Right. Right. The most important inquiry,

1 though, is to whether any conflict that exists is so great that
2 it results in a total lack of communication preventing an
3 adequate defense.

4 So, Mr. Poke, I'm going to ask you to tell me what
5 specifically Mr. Caver is not doing that you think he should do
6 or that he's doing that you think he shouldn't do that enures to
7 your detriment. And, by the way, if you don't want to talk with
8 the government present, I'll ask Mr. Karner to step out until
9 you finish.

10 MR. CAVER: And that's actually one of the requests
11 that I was going to make of the court. I understand the
12 government has filed an objection to Mr. Poke's motion, but I
13 feel like unless the government is excused, there may be a lack
14 of candor.

15 THE COURT: The government's always been cooperative
16 that way.

17 MR. KARNER: Yes, sir. Judge, I'd just like some
18 guidance from the court. I'm supposed to be down in front of
19 Judge Mahoney at 11:00. Do you want me to wait up here outside
20 the courtroom? Should I go down to Judge Mahoney's courtroom
21 and come back after that?

22 THE COURT: Why don't you wait out here. Why don't you
23 let Judge Mahoney -- why don't you step out and let Judge
24 Mahoney's clerk know that you're detained here.

25 MR. KARNER: I think their staff already has graciously

1 done so.

2 THE COURT: All right. Why don't you just wait
3 outside, and I'll have Mr. Ferguson come and get you when we're
4 concluded.

5 MR. KARNER: Yes, sir.

6 (Whereupon, Mr. Karner left the courtroom.)

7 THE COURT: All right. Dayton.

8 DEFENDANT POKE: Well, I'm just --

9 THE COURT: Pull that microphone in front of you and
10 talk into it so that I can hear what you have to say.

11 DEFENDANT POKE: Well, I feel like it's my right that I
12 get to challenge the things that's in my PSI, as far as my
13 criminal history, and I'm entitled to file a motion for my
14 mitigated sentence and --

15 THE COURT: Okay. That's way too broad. I need to
16 know specifically what Mr. Caver is refusing to do that he
17 should do or that he's doing that you don't want him to do.
18 Don't just say I want him to look into my criminal history.
19 Don't just say I want mitigation. I can't make a decision based
20 upon those things. Tell me specifically what he's doing or not
21 doing.

22 DEFENDANT POKE: I mean, he refusing to challenge my
23 prior convictions and refusing to file the motion for my
24 mitigated factors.

25 THE COURT: Well, you just said the same thing what you

1 told me before. You just repeated what you told me before.

2 DEFENDANT POKE: My mental health evaluation, the
3 post-traumatic stress, I'm entitled to file a motion for a
4 departure. He refusing to do that, and he refusing -- how can I
5 say it. Challenge me getting my -- for the government
6 cooperation. I mean, at least mention it. He was saying he
7 couldn't mention it or something. You know, these are all the
8 things I want brought up at my sentencing, and he's saying he's
9 not entitled to do it.

10 THE COURT: Okay. What prior criminal history is there
11 that you think should be challenged?

12 DEFENDANT POKE: The drug convictions that the
13 government's using to career me and the prior convictions that
14 they using to armed career me.

15 THE COURT: Okay. Three things. Mr. Caver, Mr. Poke
16 said you're refusing to challenge -- I think what he's saying is
17 those criminal convictions which the government is going to use
18 as a predicate for having him declared an armed career criminal
19 or a career offender.

20 MR. CAVER: Judge, if I can start out, what I think
21 Mr. Poke is referring to is the last time we were in court I
22 came to see Mr. Poke prior to the court calling the case. We
23 had a discussion that came on the heels of my visiting him at
24 MCC.

25 What I think -- and Mr. Poke can correct me if I'm

1 wrong. What I believe -- and this is why I asked the government
2 to step out. I believe that what Mr. Poke is alleging is based
3 on about a ten-minute long conversation we had immediately prior
4 to court, where Mr. Poke had waited until after our in-person
5 meeting to rapid-fire ask a series of questions, most of which I
6 genuinely did feel were not relevant to his case based on having
7 about ten minutes to think about them.

8 The reason that I went to see him in person was so that
9 we could discuss the PSR and we could talk about my strategy to
10 proceed both on a written list of objections to what was in the
11 PSR, as well as a sentencing memo included in which we would
12 consider each of the sentencing guidelines that made him -- that
13 resulted in the guideline calculation as set forth in the
14 presentence report.

15 Our original conversation at MCC got side-tracked with
16 an issue of case law, which I think -- I had thought we had
17 later clarified by my sending Mr. Poke a brief about the issue
18 of case law. When we came back and we had the meeting here
19 before court, apparently it wasn't fully resolved, and that led
20 into a series of these questions for which I was unprepared in
21 large part because I hadn't gone through the PSR with him to
22 ensure that he understood what my plan was.

23 With that predicate -- that's a long lead into the
24 answer to your question -- there may be issues with criminal
25 convictions that we can challenge. To be honest with the court,

1 I didn't see anything upon my first review. Once Ms. Taborski
2 reviewed the criminal history and she secured certified copies
3 of convictions, I was unclear as to what particular vehicle I
4 would use to challenge a prior criminal conviction for the
5 purposes that Mr. Poke is stating he wishes to have them
6 challenged. Certainly I will continue in my research if that is
7 necessary in order to determine the legal basis upon which I can
8 challenge a prior criminal conviction.

9 The criminal convictions can only be challenged in
10 limited circumstances, and as far as I read the presentence
11 report, those circumstances do not exist here. If Ms. Taborski
12 is correct and Mr. Poke's criminal history is correct, if those
13 convictions have been entered and they have been appropriately
14 researched, there's going to have to be a good faith basis for
15 me to challenge that, which at least upon my first review I did
16 not see.

17 THE COURT: Mr. Poke.

18 DEFENDANT POKE: I mean, the conversations that we had
19 at MCC when I asked him to challenge the priors, his words was
20 the PSR is not wrong, the government's not wrong, and you
21 qualify for whatever time that they saying that you eligible to
22 get.

23 THE COURT: Okay. But what Mr. Caver is telling me,
24 that he's researched it, he's looked into it, he's reviewed it,
25 and that you do qualify for career offender or career criminal.

1 If you qualify, you qualify. If you don't, you don't.

2 I don't think you should be sentenced as either a
3 career offender or an armed career criminal -- I think those are
4 the terms we're talking about -- if you're not. And if you
5 don't qualify, I won't sentence you there. But if you are, you
6 are. I wish you weren't for your sake, but if you are, you are.

7 If you can show me what specifically Mr. Caver isn't
8 doing or where he's wrong, I'll look into it. I'll consider it.
9 I'll research it.

10 DEFENDANT POKE: Well, I explained to him like the
11 aggravated batteries, just how it was written in the indictment,
12 provoking -- assaulting or provoking. If that's written in the
13 indictment, the state says it can't be used because it's not a
14 violent offense and wasn't no weapon involved. And that kills
15 two of the convictions right there that they trying to use. And
16 I researched it myself.

17 And then with the Buchmeier, with the discharging of
18 parole, they can't use them prior convictions as predicates for
19 armed career -- I'm for sure they're armed career, but I ain't
20 sure with the career. But we would never know if we don't try
21 to challenge these things. I can't just accept his word for it
22 because this should have got researched before he even came to
23 see me. I mean, at least look into it. But it never got looked
24 into. But I looked into it myself, and I explained to him that
25 it doesn't apply to me. Just because I got prior convictions

1 don't mean them convictions qualify for the armed career or the
2 career.

3 THE COURT: Are there other offenses that would qualify
4 you or other convictions that you have that would qualify you
5 for either career offender or armed career criminal besides the
6 aggravated battery?

7 DEFENDANT POKE: The drug case and the robbery. But I
8 was discharged off parole for them charges, and it states with
9 the Buchmeier if I was discharged off parole and my rights was
10 restored, then them cases can't be used.

11 THE COURT: Well, no, that can't be right. If you're
12 discharged from parole, that vacates the conviction?

13 DEFENDANT POKE: And my rights was restored, them
14 convictions can't be used as armed career.

15 THE COURT: That doesn't sound right to me.

16 DEFENDANT POKE: That's what the government explained
17 to you last week. Remember? That's how he was explaining it.
18 I mean, I ain't explaining it to the T, but that's how the
19 Buchmeier work.

20 If I discharge off parole, they send -- a letter was
21 sent out saying that my rights is restored. Now, the letters
22 was misleading, I guess. Got convicted felonies (sic) thinking
23 their rights is restored to possess a firearm. So, 'til they
24 correct the letter up to 2004, they saying the prior convictions
25 before then that you discharged off parole can't be used.

1 THE COURT: What about Buchmeier, Mr. Caver?

2 MR. CAVER: Judge, I think what the government was
3 explaining and I think what Mr. Poke is explaining is that if
4 there was a conviction that was based upon an erroneous belief
5 by the Illinois Department of Corrections letter stating that
6 one's rights had been restored and the defendant can show that
7 that conviction was as a result of that erroneous belief, that
8 in certain circumstances a conviction may not be able to be
9 used. I don't believe that that applies to Mr. Poke's
10 situation. I don't have a letter from the Illinois Department
11 of Corrections. It is not a similar case to Buchmeier, as far
12 as I have been shown.

13 This kind of goes also to a couple of issues that
14 Mr. Poke raised with regard to the mental health treatment. One
15 of the questions -- and I don't mean to unnecessarily prolong
16 things, but for the court's information, one of the questions
17 was was I going to be able to challenge for a downward departure
18 based upon the fact that Mr. Poke had been found to be mentally
19 ill or mentally incompetent, and he asked me would you be able
20 to do that, and I said no, and here's why, because we don't have
21 a physician who has explained that you are eligible or that
22 you've been found mentally ill or mentally eligible in order to
23 look for a departure from the guidelines on that basis.

24 Certainly there are mental health issues that are
25 referenced in the PSR, but not -- Mr. Poke wanted me to go into

1 sort of a hypothetical, well, if he was, what could we discuss
2 if he was diagnosed mentally ill. And there again, it wasn't a
3 situation that applied to Mr. Poke, and what I wanted to do was
4 ground ourselves in what could apply to Mr. Poke so that I could
5 be most prepared in order to prepare for the court that written
6 list of objections in the sentencing memo to be able to argue in
7 sentencing.

8 THE COURT: Do you have to have a psychiatrist
9 diagnosis to qualify for a mental illness for a departure
10 request?

11 MR. CAVER: No, I don't think so. I think it can be
12 argued. I think I could make a good faith basis to argue that
13 what's contained in the PSR could qualify him under the correct
14 circumstances. But, again, what we were discussing was
15 something that didn't apply to him. I can't argue that he has a
16 finding of mental illness if that hasn't been found by a
17 licensed physician. I can argue --

18 THE COURT: That's what I'm asking. What about if it
19 was a clinical psychologist who found that he was mentally ill,
20 decided that he was mentally ill?

21 MR. CAVER: Well, that may be, but that hasn't been
22 found here. The diagnosis in the PSR is that he has this
23 history, but --

24 DEFENDANT POKE: No. It states that I was diagnosed
25 with post-traumatic stress and personality disorder.

1 MR. CAVER: And that's what I'm saying. What is
2 contained in the PSR can be argued. What we were discussing was
3 a hypothetical that I was mentally ill. Well, mental illness
4 and being mentally ill are different things. Mr. Poke may
5 suffer from some mental illness, and that can be argued, but the
6 conversation that we were having was in the context is if he
7 were diagnosed to be something other -- something in addition to
8 what was contained in the PSR.

9 THE COURT: Okay. Well, the question to you is are you
10 willing to look into this issue and, if there's a good faith
11 basis to argue it, bring it to my attention during his
12 sentencing hearing?

13 MR. CAVER: Yes.

14 THE COURT: And as far as the aggravated battery,
15 what's the -- Mr. Poke made some comments about the aggravated
16 battery not qualifying as predicate offenses for career offender
17 or armed career criminal.

18 MR. CAVER: I believe that Mr. Poke's criminal history
19 would still qualify him. But when he did mention Buchmeier, he
20 mentioned the insulting or provoking nature. I would be happy
21 to look into that, if we can have an opportunity to go through
22 for me to explain to him why those were calculated in the
23 criminal history first. If that doesn't resolve the reason why
24 Mr. Poke has a concern about why those are counted and why those
25 are considered in the PSR, absolutely I'd be happy to discuss

1 that with him.

2 The first -- and I apologize to the court if -- the
3 first step that I wanted to take was to have an opportunity to
4 explain to Mr. Poke what was contained in the presentence report
5 and why. I think it is premature to be pursuing just any avenue
6 before I at least have a good faith ability to go through the
7 presentence report with him.

8 Certainly there can be a lot of independent research
9 that can be done by Mr. Poke in his situation, but I think it
10 would be much more helpful to me as the attorney and certainly
11 much more targeted to be able to go through each page of the
12 presentence report, explain to Mr. Poke what's contained in the
13 presentence report and why to see if that doesn't answer any of
14 his questions. I think that that's probably the reason why the
15 court wants me to go through the presentence report with him, so
16 that I'm not researching endlessly every potential issue that
17 Mr. Poke could possibly come up with that might be related to
18 the case.

19 THE COURT: Mr. Poke, you have a robbery conviction --

20 DEFENDANT POKE: Yeah.

21 THE COURT: -- and two drug convictions that would
22 qualify you for -- let me talk -- that would qualify you for
23 career offender or armed career criminal, but you're saying that
24 those don't count because of this Buchmeier case. Is that where
25 you're at with that?

1 DEFENDANT POKE: Yes. And I understand what he's
2 saying about he don't have the letter. That's why they got the
3 mailbox exception rule. Because, I mean, I'm thinking he was
4 going to research all these things, and by him being a
5 professional lawyer at this, I ain't think I would have to
6 provide him as much information as I did about these things
7 because, I mean, he probably should have did this sometime
8 before in his life, challenge the prior conviction.

9 THE COURT: But Mr. Caver has to make a good faith
10 effort or has to make his arguments in good faith. In other
11 words, he has to be reasonably certain in his professional
12 opinion that the arguments carry some weight. He's licensed as
13 an attorney, and his license is not unfettered. It has certain
14 bounds. It has certain restrictions. His license requires him
15 not to make frivolous arguments to the court.

16 I'm sure he will appreciate any help you can give him,
17 but, you know, there are hundreds of arguments he could make
18 that don't make sense, that are frivolous, and what he's telling
19 me, I think, is that he doesn't want to spend his time on
20 frivolous arguments when he could be spending his time focusing
21 on arguments that do have merit, that do have weight, that can
22 help you.

23 DEFENDANT POKE: I understand that, your Honor, but he
24 never had no arguments. Everything we talking about as good
25 faith, he just came up with that in the last week. Everything

1 that we talking about I brought to his attention.

2 His thing is you qualify for 30 years. Let's go in
3 here. I'm going to argue for you to get the 30 years, and
4 that's that. That's not that, you know what I'm saying. I
5 mean, that's how he wanted to handle it, and that ain't how you
6 handle -- the PSI is for me to challenge the things in there
7 that I feel ain't right.

8 THE COURT: He's telling me today that he's going to
9 look into any basis for challenging these predicate convictions.
10 He's told me today that he's going to look into this mental
11 health issue that you've got and request a variance, if there's
12 a basis for it.

13 As to the mitigation for cooperation, what's that
14 about? You think you should get some mitigation for cooperating
15 with the government. Is that --

16 DEFENDANT POKE: Yeah.

17 THE COURT: And, Mr. Caver, are you willing to argue
18 for mitigation if there's cooperation with the government?

19 MR. CAVER: There was cooperation with the government,
20 and to the extent that that's possible, yes. This is one of
21 those issues that was brought up in our second discussion with
22 the 5K1.1 motion, which was explained to me. I explained I
23 can't file a Rule 5K1.1 motion. I am certainly happy to look
24 into Mr. Poke having cooperated with the government.

25 The government decided categorically that whatever

1 information Mr. Poke had provided to them in the proffer was not
2 going to result in them filing a 5K1.1 motion, but to the extent
3 that cooperation can be used as mitigation at sentencing, I will
4 be happy to look into that, again once I've had an opportunity
5 to look at the presentence report with Mr. Poke. If Mr. Poke
6 doesn't want to go through the presentence report with me, I
7 understand that.

8 DEFENDANT POKE: I mean, we can go through it, but, I
9 mean, the only thing in there is my criminal history, which is
10 what I want to challenge, the mental health which is what I want
11 to challenge, and my indictments, my supersede indictment and my
12 first original indictment, you know.

13 My whole thing is I was just trying get everything done
14 and over with. I mean, it was going to take us -- he came to
15 see me two weeks before sentencing. So, I mean, it wasn't going
16 to be enough time for him to go over these things and challenge
17 them. I understand he's saying he's going to do it now. So, I
18 mean, if he's going to do it, then, you know, I mean, we can
19 continue working. But if he's just saying he's going to look
20 into this stuff and he don't, then we going to be back at square
21 one.

22 MR. CAVER: Your Honor, if I may respond. I went to
23 see Mr. Poke two days after I received the presentence report.
24 After having reviewed the presentence report preliminarily, not
25 in exhaustive detail to prepare for the sentencing, but in

1 enough detail to be able to speak with him about the presentence
2 report. I got it within two days. That was a month before the
3 sentencing hearing. That was going to be plenty of time for me
4 to speak with him.

5 My concern here is that I thought the communication
6 issues between Mr. Poke and I had been resolved. There are
7 issues here, your Honor, that suggest to me that Mr. Poke has a
8 vehement distrust of me and believes that I am not doing what he
9 needs to be done. There were comments made in that meeting at
10 the MCC which concerned me greatly that Mr. Poke has no trust in
11 me as an attorney. If that's the case, that goes far beyond
12 things that I'm going to be looking into with regard to the
13 presentence report.

14 And the other concern that I have is I don't think
15 Mr. Poke understands my obligation as an attorney to the extent
16 that he believes that as his attorney, I do dictate the
17 strategy, although I invite any input that he would like to
18 give. I encourage input from the client, not only because it
19 gives the client an opportunity to be heard, but in the event
20 that I missed something, it's a backstop to have my client
21 telling me, hey, what about this possible angle. I'll be frank
22 with the court. I encourage that sort of communication.

23 But if that communication is not happening and the
24 client distrusts the attorney, then it's very difficult for an
25 attorney to work as the attorney. It would be another thing

1 entirely as stand-by counsel or as somebody who was not in
2 charge of the case, but the lack of communication here is what I
3 don't believe is going to be resolved, unless I'm very surprised
4 about what happens today.

5 THE COURT: Okay. Well, that's the big question,
6 whether there's sufficient communication that you can present an
7 adequate defense. That's what I need to know. That's the
8 bottom line of this whole hearing. Are you communicating with
9 Mr. Poke in such a way that you can present an adequate defense,
10 or is there no communication?

11 MR. CAVER: To be frank with the court, I believe that
12 I had resolved -- what I did after that meeting at MCC is I
13 attempted to resolve his immediate concern about the issue that
14 prevented us from continuing that meeting further to go through
15 the PSR. I genuinely believed that we had resolved the
16 communication issue with respect to that until the meeting here
17 before court on the 9th.

18 Based on the communication that we had in the meeting
19 in person that had not been resolved, had not been addressed, I
20 thought, well, okay, maybe we can finesse this, maybe we can get
21 over this. Those, in addition to the statements that were made
22 and the comments that were made on the 9th, leave a serious
23 doubt in my mind as to whether or not Mr. Poke is willing to
24 communicate with me to the extent that's necessary to do so, so
25 that first he feels like he has been represented adequately and,

1 second, so that feels -- so that he is actually --

2 THE COURT: What are these statements? You can't put
3 them on the record?

4 MR. CAVER: Well --

5 DEFENDANT POKE: I think Mr. Caver is asking the court
6 for me to give him a hug, say I'm sorry or something.

7 THE COURT: To what?

8 MR. CAVER: Indeed not.

9 THE COURT: No, I didn't hear what he said.

10 MR. CAVER: He said I'm asking you for him to give me a
11 hug.

12 THE COURT: Oh, no.

13 MR. CAVER: And I'm not. That's okay.

14 THE COURT: You can hug him if you want.

15 DEFENDANT POKE: Well, you want me to say I'm sorry,
16 I'm sorry, Mr. Caver, for the things I said at MCC.

17 MR. CAVER: No, Judge. The comment specifically was
18 that -- and I would provide it in chambers, if you wanted to,
19 but essentially that I am working with the government, in
20 conjunction with the government, toward the prosecution of
21 Mr. Poke.

22 DEFENDANT POKE: I mean, excuse me. Not to cut him
23 off. I mean, I don't have no other reason to think that if I'm
24 asking him let's go in here and argue I'm not eligible for
25 30 years and he's telling me, well, the government and the PSI

1 say you qualify. So, I can't go in there and argue that you're
2 not eligible for it.

3 THE COURT: But that's right. He's not here to tell
4 you -- he's here to advise you as the way things are, not as how
5 you'd like them to be. Sometimes an attorney is doing his or
6 her job when they give you bad news. They can't always give you
7 good news.

8 DEFENDANT POKE: I mean, no. I ain't always looking
9 for good news, but, I mean, I just want what I'm entitled to. I
10 mean, I'm already getting railroaded. I should be at least able
11 to challenge the -- at least be able to challenge it so I can
12 have some appeal rights or something because if I don't mention
13 it now and I go down, I ain't going to never be able to mention
14 it.

15 THE COURT: No, that's not true. If Mr. Caver is found
16 to be ineffective, you can raise that as an issue on appeal. If
17 he's not doing something that a minimally competent attorney
18 would do and it's enured to your detriment, it's caused you some
19 prejudice, that's a ground, that's an issue you can bring up to
20 the Court of Appeals, and the Court of Appeals will resolve it.
21 And if they found that he has been incompetent and that has
22 worked to your prejudice, they'll send the case back to me, and
23 we'll do it with another attorney.

24 DEFENDANT POKE: I mean, you know, I understand all
25 that, but, your Honor, I'm just doing what I'm supposed to do.

1 We ain't talking about months here. We're talking about the
2 rest of my life. So, I supposed to fight as hard as I can.
3 And, you know, at this point in time, with the numbers, I can't
4 just accept whatever Mr. Caver tell me right now. I mean, I'm
5 sorry. We got to research this, and we got to go off into this.
6 I mean, if he ain't going to fight, I'm going to fight. I'm
7 going to force him to fight for me. We just ain't going to go
8 in here and say I agree to that.

9 THE COURT: Well, the question I have for you is can
10 you continue to communicate with Mr. Caver.

11 DEFENDANT POKE: Yeah. I mean, I been showing him
12 facts. Everything that I show him that he said he couldn't do,
13 now he's saying he's doing it. So, he can now, or he can look
14 into it. So, evidently, I think I put up a good argument.

15 MR. CAVER: And, again, I want to just be crystal
16 clear. That is not what I'm saying. I am not saying that we
17 will make those arguments. What I'm saying is that I will
18 determine whether or not there is a good faith basis to make
19 every particular argument, and if there is and if it is
20 supported by the law and the facts in this case that that will
21 be made if it's strategically appropriate.

22 What I am concerned -- and this comes back to the heart
23 of the matter -- is that there's a -- I think there's a
24 fundamental disconnect between what the attorney's role is in
25 representing a client and what Mr. Poke wants the attorney's

1 role to be. Here Mr. Poke almost draws a contrast that "I'm
2 just doing my job here," he says, as if to draw a contrast that
3 his attorney isn't doing his job. I'm the attorney. I am doing
4 my job, as well. My job is bounded within the law and in the
5 facts of this case, and if there is some disagreement with the
6 role of the attorney, then certainly I think that makes
7 communication much harder.

8 DEFENDANT POKE: Well, I guess we ain't going to be
9 able to communicate then.

10 THE COURT: All right. I'll find that there's a total
11 lack of communication preventing an adequate defense. I'll
12 grant the defendant's motion. I'll substitute Mr. Caver for
13 another attorney.

14 Susan, can we do that now, or does there have to be
15 some notification from the Federal Defender?

16 THE CLERK: To have somebody come over?

17 THE COURT: No, no. 'Til we find out who the new
18 attorney is.

19 THE CLERK: It will probably take some time.

20 THE COURT: All right. Tim, you can have Mr. Karner
21 come back in.

22 (Whereupon, Mr. Karner re-entered the courtroom.)

23 THE COURT: I'll take this off for sentencing on
24 August 29th. I'll set this for status on August 30th. At that
25 time I'll have Mr. Poke's new attorney appear.

1 Mr. Karner, I've granted the motion. Mr. Poke does not
2 need to be here on the 30th. All we're going to do is schedule
3 this for a sentencing date.

4 MR. KARNER: I'm sorry, Judge. What date is this set
5 for?

6 THE COURT: I'll set it for August 30th. I'll ask
7 Mr. Poke's new attorney to appear on that date, and at that time
8 we'll schedule it for another sentencing hearing.

9 MR. KARNER: What time on the 30th?

10 THE COURT: 9:00 o'clock on my status call.

11 MR. KARNER: And did your Honor already name an
12 attorney?

13 THE COURT: No. I was asking Susan. We don't know the
14 attorney unless the Federal Defender has to tell us something.

15 But, again, I'll tell you, Mr. Poke. You don't get an
16 attorney because the attorney won't argue what you want him or
17 her to argue. They have to have a good faith reason to do it.
18 They have to know in their heart that there's a good basis for
19 doing it. They will not and they cannot and they should not
20 make arguments that are not well founded in the law and the
21 facts. And as I've said, your attorney is not appointed to give
22 you good news. Sometimes your attorney is doing his or her job
23 when they give you bad news. But we'll see you -- I'll see the
24 attorney on August 30th. We'll find out what the new sentencing
25 date will be.

1 MR. KARNER: Yes, sir.

2 DEFENDANT POKE: Your Honor, can I ask a question?

3 Them facts, them things that I'm asking to be argued, am I
4 entitled to have them things argued?

5 THE COURT: No. No. That's just what I told you.

6 This is the third time that I told you. Just because you want
7 things argued doesn't mean they should be argued. There has to
8 be a good faith basis to do it. It has to be well founded in
9 the law or in the facts. Just because you dream up some theory
10 doesn't mean the attorney has an obligation to argue it. The
11 attorney has to look at it and review it and in his or her heart
12 know that there's a sound basis for doing so. If there's not a
13 sound basis, they are violating their oath as an attorney by
14 bringing that argument or that issue to the court.

15 DEFENDANT POKE: But my prior convictions, that's not
16 made up. Like, I'm trying to get a right understanding. So,
17 you telling me that me challenging my prior convictions, that's
18 like something that you don't supposed to do? That's what I'm
19 asking.

20 THE COURT: You can do it if there's a reason for doing
21 it.

22 DEFENDANT POKE: Yeah, and I gave reasons, right?

23 THE COURT: But -- I don't know. And I'm not making
24 that call right now. But there may be a good reason for it. If
25 there is, we can count on your attorney to do it. If there

1 isn't, then your attorney cannot do it, shouldn't do it, would
2 be violating his or her oath as an attorney if they did.

3 You can make suggestions. You can give cases. You can
4 make arguments to your attorney. You can discuss it. You can
5 give him or her all the facts and law that pertain to it. But
6 at the end of the day, if the attorney decides that argument
7 should not be made, then it shouldn't be made, and you cannot
8 force the attorney to do it. That's not the way --

9 DEFENDANT POKE: I mean, if he looked into it, your
10 Honor. It never got looked into. None of this stuff never got
11 looked into.

12 THE COURT: Well, he was telling me that he was going
13 to look into it.

14 DEFENDANT POKE: After sentencing?

15 THE COURT: You want him off the case.

16 DEFENDANT POKE: After sentencing?

17 THE COURT: Huh?

18 DEFENDANT POKE: I mean, we going for sentencing on the
19 29th. He's going to do it afterwards? I mean --

20 THE COURT: Well, I'm sure your attorney will look into
21 it.

22 DEFENDANT POKE: All right. Thank you. I appreciate
23 it.

24 THE COURT: You're welcome.

25 DEFENDANT POKE: I ain't here to give the court a hard

1 time. I just want what I'm entitled to.

2 THE COURT: You're not giving me a hard time at all.

3 At least I don't perceive it that way.

4 That's all. Court's in recess.

5 (Which were all the proceedings had in the above-entitled
6 cause on the day and date aforesaid.)

7 I certify that the foregoing is a correct transcript from
8 the record of proceedings in the above-entitled matter.

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11 Mary T. Lindbloom
12 Official Court Reporter

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